
Appeal Decision

Site visit made on 25 February 2020

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2020

Appeal Ref: APP/A5840/D/19/3237758
12 One Tree Close, London SE23 3QZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Ward against the decision of the Council of the London Borough of Southwark.
 - The application Ref 19/AP/1577, dated 24 May 2019, was refused by notice dated 19 July 2019.
 - The development proposed is retaining wall and raised decking with railings within front garden.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application has been submitted retrospectively. I have dealt with the appeal on that basis.
3. The description of development in the banner heading above is taken from the Council's decision notice. While the appeal form indicates that the description had not changed from that stated on the application form, the above description which more concisely describes the development was nevertheless entered on the appeal form and I have determined the appeal on that basis.
4. Moreover, the Council's decision notice and the appellant's appeal form describe the development as 'retention' of retaining wall and raised decking with railings within front garden. However, 'retention' is not an act of development. Accordingly, I have omitted this from the description.
5. As part of the appeal submission, the appellant has put forward a revised drawing which would reduce the area of the decking by proposing a planting area in front of the kitchen window of 5 One Tree Close and would replace some of the balustrade with solid fence panels. However, I am mindful that the appeal process should not be used to evolve a scheme to overcome the Council's reasons for refusal and instead a fresh planning application should usually be made.
6. Whilst in certain circumstances a proposal can be amended through revised plans during an appeal, in line with the Wheatcroft principles¹, it is my view in

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

this case that the appeal must be determined on the basis of the plans as originally submitted to the Council and upon which it based its decision. To do otherwise would prejudice the interests of the Council, interested third parties and consultees, who have not been consulted on the revised scheme and who may have observations to make. I have therefore proceeded to determine the appeal on the basis of the plans as originally submitted.

7. The Council's decision notice refers to the National Planning Policy Framework 2018. However, this was replaced in February 2019 by the National Planning Policy Framework 2019 (the Framework) against which I have determined this appeal. I am satisfied that the Framework has not introduced any material changes to the 2018 version that are relevant to the appeal proposal and that no party has been prejudiced by this matter.

Main Issue

8. The main issue is the effect of the development on the living conditions of the occupiers of 5 One Tree Close (No 5) with particular regard to privacy and noise.

Reasons

9. One Tree Close comprises a terrace of properties on land that rises steeply from Honor Oak Rise. The majority of the terrace accommodates ground floor flats with maisonettes above. Entrances to the properties are on the front and rear of the building. The appeal property is a maisonette which has its outdoor amenity or garden area positioned directly in front of the kitchen window of a ground floor flat, No 5. This area (the appeal site) is also within close proximity to a bedroom window of this neighbour. This configuration, whereby the maisonettes have outdoor space in front of the ground floor flats' kitchen and bedroom windows is repeated throughout the terrace.
10. A brick wall approximately 2 metres in height has been built at the boundary of the property and decking with timber railings has been installed atop to provide an area level with the entrance to No 12. The appellant considers this improves the safety, security and quality of the space to allow their son to play in, as well as improving the appearance of the garden area which was previously overgrown.
11. Prior to the installation of the raised decking the appeal site sloped downwards away from the building. I saw on my visit that the spaces along this frontage contain a mixture of ornamental planting and grassed areas and are tiered or sloping with steps leading to entrances. The gradient of these external spaces means there is very little opportunity for sitting out or playing. Therefore, despite these garden areas being outside the windows of unrelated dwellings, interference with the living conditions of the occupiers of those neighbours, through the use of these garden areas, is in reality minimal.
12. Whilst the development has provided a more useable space for the occupiers of No 12, the way in which the development has altered the ability to use the appeal site is such that it significantly increases the impact of the use of that space to the detriment of the occupiers of No 5. I accept that a level of overlooking of the kitchen and bedroom of No 5 already existed, however, the decking affords direct views into the kitchen of No 5 from a larger area than previously occurred. It also results in increased overlooking of the bedroom

window of that neighbour, albeit at an oblique angle and notwithstanding the provision of an approximately 1.5 metre high intervening fence. Consequently, the development has a negative effect upon the privacy of the occupiers of No 5.

13. The issue is compounded by the size and depth of the decking area which is large enough to allow sitting out and for people to gather on it. Noise and disturbance from people using the decked area would also be readily apparent to the occupiers of No 5 and would be significantly increased from that previously experienced.
14. I therefore conclude that the development has a significant harmful effect on the living conditions of the occupiers of 5 One Tree Close with regard to privacy and noise. Thus, it conflicts with Saved Policies 3.2, 3.11 and 3.12 of the Southwark Local Plan 2007, Strategic Policy 13 of the Southwark Core Strategy 2011 and the standards set out in the Council's 2015 Technical Update to the Residential Design Standards Supplementary Planning Document 2011, which amongst other things seek to protect the living conditions of the occupiers of neighbouring properties. It would also conflict with the amenity aims of Policy 7.6 of the London Plan 2006. Further, it would conflict with paragraph 127 of the Framework which emphasises the importance of ensuring developments provide a high standard of amenity for existing and future users.

Other Matters

15. The appeal site is within the Honor Oak Rise Conservation Area (CA). In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA. However, given the location, scale and design of the development, I see no reason to disagree with the Council that the proposal has a neutral effect on the CA and therefore its significance is preserved.
16. My attention has been drawn to other examples of raised decking within the terrace. However, I do not have full details of the planning status of these developments and from what I viewed on site the individual circumstances of these examples are not directly comparable to the appeal scheme. In any case, I have considered this appeal on its own merits.
17. I note the level of support for the development; however, this counts neither for nor against the proposal and does not overcome the harm I have identified in relation to the main issue. The appellant's concerns over the application process is not a matter for me in this appeal.
18. The Council's decision notice makes reference to Policy 7.4 of the London Plan 2006. This policy is concerned with matters of local character. As no issues were raised by the Council in relation to the effect of the proposal on the character and appearance of the area, I find no conflict with this policy.

Conclusion

19. For the above reasons the appeal is dismissed.

S Tudhope
Inspector